

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE  
ZONING MAP AMENDMENT REPORT (#FZC-19-24)  
ZUZU LLC - SCOTT RUTA  
JANUARY 24, 2020**

**I. GENERAL INFORMATION**

**A. Project Description**

This is a report to the Flathead County Planning Board and Board of Commissioners regarding a request by Scott Ruta on Behalf of ZuZu LLC, for property located within the Highway 93 North Zoning District. The proposed amendment, if approved, would change the zoning of the subject property from *SAG-10 (Suburban Agricultural)* to *B-3 (Community Business)* and *HO (Highway Overlay)*.

**B. Application Personnel**

**1. Owner/Applicant**

ZuZu, LLC  
Scott Ruta  
PO Box 4357  
Whitefish, MT 59937

**2. Technical Representative**

WGM Group  
Bruce Lutz  
431 1<sup>st</sup> Avenue West  
Kalispell, MT 59901

**C. Process Overview**

Documents pertaining to the zoning map amendment are available for public inspection in the Flathead County Planning and Zoning Office located in the South Campus Building at 40 11<sup>th</sup> Street West in Kalispell.

**1. Land Use Advisory Committee/Council**

This property is not located within the jurisdiction of a Land Use Advisory Committee.

**2. Planning Board**

The Flathead County Planning Board will conduct a public hearing on the proposed zoning map amendment on February 12, 2020 at 6:00 P.M. in the 2<sup>nd</sup> Floor Conference Room of South Campus Building located at 40 11<sup>th</sup> Street West in Kalispell. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration.

**3. Commission**

The Commissioners will hold a public hearing on the proposed zoning map amendment on March 16, 2020. Prior to the Commissioner's public hearing, documents pertaining to the zoning map amendments will also be available for public inspection in the Office of the Board of Commissioners at 800 South Main Street in Kalispell.

**II. PROPERTY CHARACTERISTICS**

**A. Subject Property Location and Legal Description**

The property is located on Highway 93 North near Kalispell, MT, assessor number 0355735 (see Figure 1 below) and is approximately 4.86 acres. The property can be legally described as follows:

TRACT 1 OF REVISED CERTIFICATE OF SURVEY NO. 1633, LOCATED IN GOVERNMENT LOT 4 OF SECTION 18, TOWNSHIP 29 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE MONTANA DEPARTMENT OF TRANSPORTATION IN BARGAIN AND SALE DEED RECORDED JANUARY 24, 2002, AS DOC. NO. 2002-024-10030.

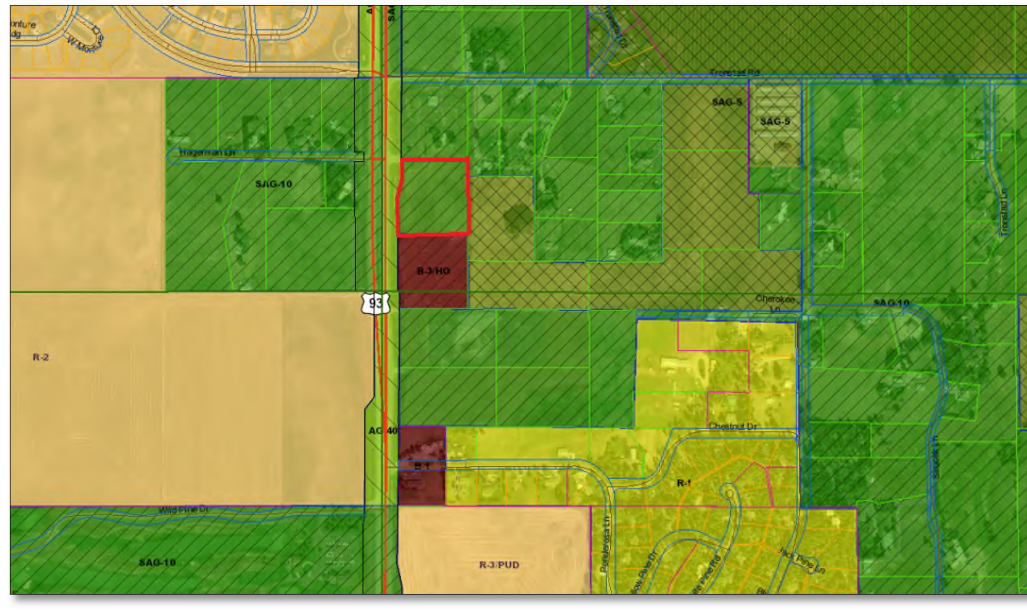
**Figure 1:** Subject property (outlined in red)



**B. General Character of and Reason for Amendment**

The property is located between U.S Highway 93 just south of Tronstad Road. The property is relatively flat open space, which has been historically used for agriculture. The property is approximately 4.86 acres and if approved would be a continuation of the existing B-3/HO zoning to the south (see Figure 2). The application states the reason for the request as, “Provide zoning to allow business and building(s) and to develop transportation easement/frontage road to provide access to properties to the south, increasing ease and safety.”

**Figure 2:** current zoning on the subject property (highlighted in red)



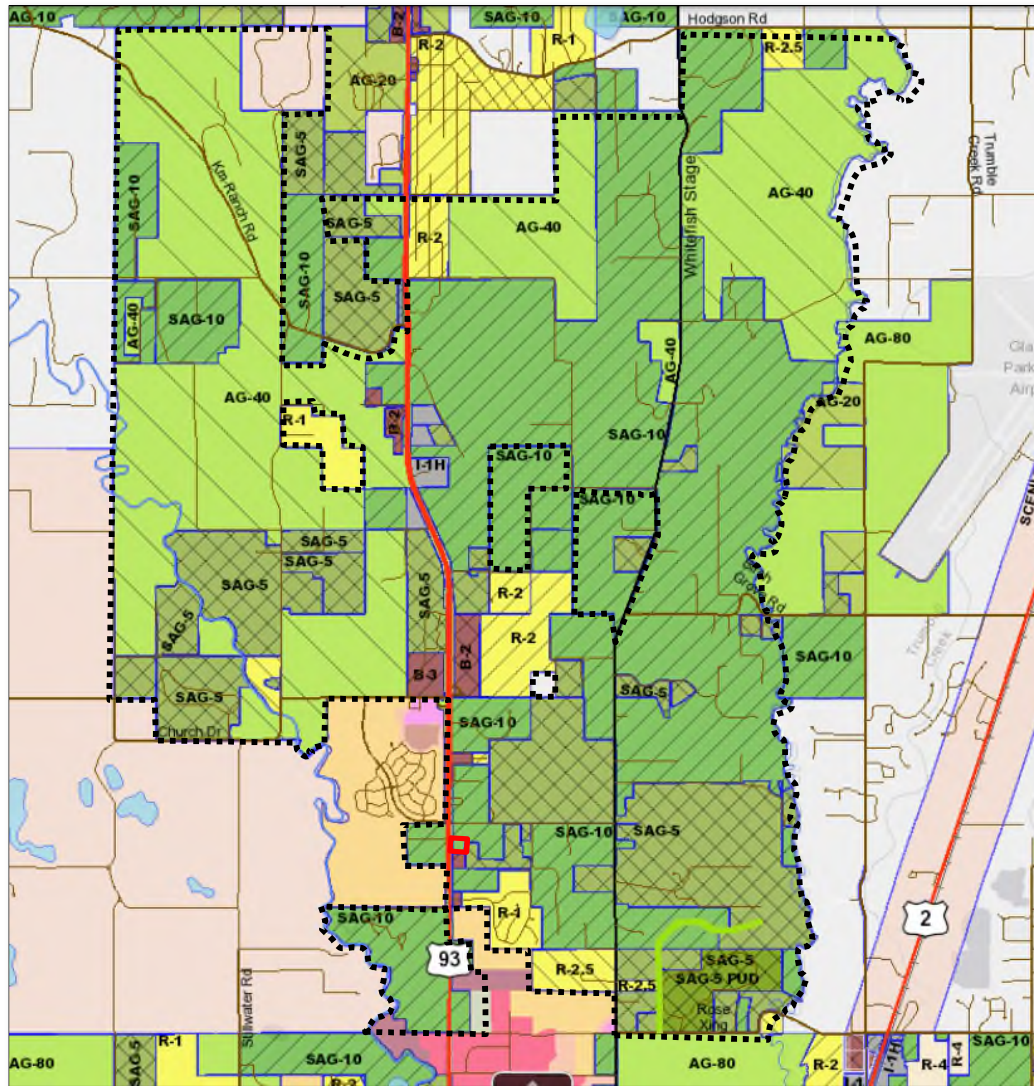
### **C. Adjacent Zoning and Character of the Overall Zoning District**

The property is located within the Highway 93 North Zoning District, which is a 12,780-acre zoning district that covers much of the area between Whitefish and Kalispell. Looking at the zoning within a half mile of the subject property and further north and south along Highway 93 the character of the Highway 93 corridor is a mixture of suburban agricultural, highway industrial, commercial and residential zoning. The property is located along Highway 93, directly adjacent to the south is similarly zoned B-3/HO and the area is generally rural residential and agricultural properties which are zoned SAG-10, SAG-5 and R-2.

To the south along the highway is B-1 zoning with a couple of businesses and a golf course zoned SAG-10. Less than a half mile to the north is legally non-conforming businesses in SAG-10 zoning. The City of Kalispell extends passed Tronstad Road to Church Drive on the west side of Highway 93, approximately 1 mile north of the property (Silverbrook Subdivision). The zoning within the Silverbrook Subdivision is a mixture of B-1/PUD at the corner of Church and Highway 93 and R-4/PUD and R-2 /PUD.



**Figure 3:** Highway 93 North Zoning District (outlined with dashed black line & property outlined in red)



#### **D. Public Services and Facilities**

Sewer:	N/A
Water:	N/A
Electricity:	Flathead Electric Cooperative
Natural Gas:	Northwestern Energy
Telephone:	CenturyTel
Schools:	Kalispell School District Flathead High School District
Fire:	West Valley Fire District
Police:	Flathead County Sheriff

### **III. COMMENTS**

#### **A. Agency Comments**

1. Agency referrals were sent to the following agencies on December 12, 2019:

- Montana Department of Transportation
- Flathead County Road Department
- Flathead County Solid Waste
- Flathead City-County Health Department
- Flathead County Weeds & Parks Department
- Bonneville Power Administration
- City of Kalispell Planning Department
- Flathead High School District
- Kalispell School District
- West Valley Fire District

2. The following is a summarized list of agency comment received as of the date of the completion of this staff report:

- Flathead County Road & Bridge Department
  - Comment: “At this point the County Road Department does not have any comments on this request.” Letter dated December 17, 2019.
- Flathead City-County Health Department
  - Comment: “We have no comment regarding the proposed zone change.” Letter dated December 17, 2019.
- Bonneville Power Administration
  - Comment: “At this time, BPA does not object to this request, as the property edge is located 2.43 miles away from the BPA transmission lines or structures.” Email received December 16, 2019.
- Flathead County Solid Waste
  - Comment: “The District requests that all solid waste generated at the proposed location be hauled by a private licensed hauler. Evergreen Disposal is the licensed (PSC) Public Service Commission licensed hauler in this area.” Letter dated December 17, 2019.
- Kalispell Planning Department
  - Comment: Thank you for the opportunity to comment on the proposed zone change. We would recommend the proposed zone change of B-3HO be **denied** based on the following issues and concerns:

1. County re-zoning of the property is premature. The property appears to be currently vacant. The presumed purpose of re-zoning the property is to accommodate future commercial activity. Any change in use by the present or future owner will immediately require a review of any existing septic tank and drain field by the Flathead County Health Department, as well as any new requirement. Abutting the entire westerly boundary of the property is a City sewer main within the Highway 93 right-of-way. While not immediately adjacent to the city limits, there are sizable new city developments in close proximity to the west and south, as well as an existing city development extending nearly a mile to the north. In addition, there

is a project along Tronstad Road just to the north that is in the process of annexing into the city. The subject property is located well within the city's annexation policy boundary and the city will work with the property owner to develop the property in a coordinated manner in accordance with city policies. At that time, the city will review the appropriate zoning classification upon annexation.

2. The subject property is designate "Suburban Residential" on the Kalispell Growth Policy Future Land Use Map. The "Suburban Residential" land use designation does not anticipate as intensive of commercial zone as the B-3, nor is the B-3 Zone consistent with the adjacent city zoned properties, which generally consists of low intensity commercial, high-density residential and low-density residential uses.
3. The Highway 93 North Zoning District was specifically enacted by the property owners in the middle 1990's to avoid the spread of commercial and industrial development along Highway 93. This effort is at the heart of protecting our scenic corridors along our highways, a view championed by the greater community. Rezoning the subject property B-3HO would take all future development control away from the county, which could lead to more strip commercial and industrial development. This can be evidenced by the approval of the previous Fretz, Bergeson and McDonald industrial zone change requests, immediately to the north, which we also recommended denial.
4. Preventing the continuation of one long commercial/industrial strip from Kalispell to Whitefish along Highway 93 North is a community-wide priority. There is already ample commercial and industrial development potential currently along Highway 93 within the county and city.
5. MDT has already indicated in previous Transportation Impact Studies for users along this stretch of Highway 93 that full access approaches for commercial users are not available. Anything less than a full access approach onto Highway 93 would hinder future business access and success (i.e. right-in, right-out only access) and if approved will hinder the free flowing capacities of Highway 93, a 4-lane road that the greater Flathead has worked hard to develop, and must work harder to maintain in a free flowing configuration. There does not appear to be coordinated effort to mitigate traffic impacts to the adjacent highway and there is no perceived community benefit.
6. The property would be within a gateway entrance to the City of Kalispell. Entrance corridor standards at such entrances are intended to reduce and better control the number of accesses onto the highway

to provide safer roads for the community, as well as improving the visual aesthetics in those areas. Industrial development of the property, if it were to occur, would likely conflict with the goals of the entrance corridor standards.

Adding to the commercial and industrial zoning inventory at this time and at this location is not appropriate based on the points above. We strongly request that the Flathead County Planning Board and Board of County Commissioners deny this request based on the concerns voiced above and the negative effects approving a B-3HO Zoning District would have along this portion of Highway 93 North.”

#### **B. Public Comments**

1. Adjacent property notification regarding the proposed zoning map amendment was mailed to property owners within 150 feet of the subject property on January 24, 2020. Legal notice of the Planning Board public hearing on this application was published in the January 26, 2020 edition of the Daily Interlake.

Public notice of the Board of County Commissioners public hearing regarding the zoning map amendment was physically posted on the subject property and within the zoning district according to statutory requirements found in Section 76-2-205 [M.C.A] on January 8, 2020. Notice will also be published once a week for two weeks prior to the public hearing on March 1 and March 8, 2020 in the legal section of the Daily Interlake. All methods of public notice will include information on the general character of the proposed zoning map amendment, and the date, time, and location of the public hearing before the Flathead County Commissioners on the requested zoning map amendment.

2. Public Comments Received

As of the date of the completion of this staff report, no public comments have been received regarding the requested zoning map amendment. It is anticipated any member of the public wishing to provide comment on the proposed zoning map amendment may do so at the Planning Board public hearing scheduled for February 12, 2020 and/or the Commissioner’s Public Hearing scheduled for March 16, 2020. Any written comments received following the completion of this report will be provided to members of the Planning Board and Board of Commissioners and summarized during the public hearing(s).

#### **IV. EVALUATION OF PROPOSED AMENDMENT**

Map amendments to zoning districts are processed in accordance with Section 2.08 of the Flathead County Zoning Regulations. The criteria for reviewing zoning amendments are found in Section 2.08.040 of the Flathead County Zoning Regulations and 76-2-203 M.C.A.

##### **A. Build-Out Analysis**

Once a specific zoning designation is applied in a certain area there are certain land uses that are permitted or conditionally permitted. A build-out analysis is performed to examine the maximum potential impacts of full build-out of those uses. The build-out analysis is typically done looking at maximum densities, permitted uses, and demands on public services and facilities. Build-out analyses are objective and are not best or worst case

scenarios. Without a build-out analysis to establish a foundation of understanding, there is no way to estimate the meaning of the proposed change to neighbors, the environment, future demands for public services and facilities and any of the evaluation criteria, such as impact to transportation systems. Build-out analyses are simply establishing the meaning of the zoning map amendment to the future of the community to allow for the best possible review.

Per Section 3.20 of the Flathead County Zoning Regulations (FCZR), B-3 is defined *‘A business district to provide areas for the development of congregated community shopping areas, to serve the range of a number of neighborhoods of a major segment of the Planning Area. This district should be a business center and not a strip development.’*

The HO designation is defined in Section 3.44 FCZR as, *‘A zoning overlay district to protect and enhance the visual quality of state and federal highway throughout the County while maintaining all of the permitted and conditional uses of the underlying zone. This overlay zone is specifically created to protect scenic corridors adjacent to major transportation corridors and to mitigate impacts of new nonresidential development, expansion existing non-residential development and any changes of non-residential uses by requiring additional landscaping, buffering, signage, building, lighting, and parking design standards.’*

The SAG-10 designation is defined in Section 3.07 FCZR as, *‘A district to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.’*

The permitted uses and conditional uses for the proposed and existing zoning contain several differences. The amendment would increase the number of permitted uses from 21 to 33 while decreasing the conditional uses from 23 to 17.

The permitted uses listed in both the SAG-10 and B-3 are as follows:

- Park and publicly owned recreational facility.
- Public transportation shelter station.
- Public utility service installation.

The conditional uses listed in both the SAG-10 and B-3 are as follows:

- Temporary building, structure, or use.
- Water storage facility.

One conditional use listed within the B-3 but is allowed as permitted uses in SAG-10 is a, Caretaker’s facility. And the one conditional use listed within the SAG-10 but allowed as permitted uses in B-3 is a, Church and other place of worship.

The bulk and dimensional requirements within the current zoning requires a 20 foot setback from front, rear, side-corner and side boundary line for principal structures and a setback of 20 feet for the front and side-corner and 5 feet from the rear and side for accessory structures. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials for both the proposed and current zoning. For SAG-10 the permitted lot coverage is 20% and maximum height is 35 feet.



While the minimum district area for the B-3 zone is 5 acres and the property is exactly 4.86 acres, it is located directly adjacent to a 5 acre parcel similarly zoned B-3/HO. The proposed zoning requires a setback of 20 feet from front, and side-corner boundary lines, and 10 feet from rear boundary lines and 5 feet from side boundary lines. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 10 foot setback is required from county roads classified as collector or major/minor arterials for both the proposed and current zoning. The maximum building height is 35 feet and there is no permitted lot coverage.

The HO district requires landscaping of 10% or 8% of the developed area depending on the total acreage of the development. The HO also requires a buffer between differing zones which would include screening, possible supplemental planting or non-vegetative screening. A site plan review will also be required when the property is developed.

The existing zoning requires a minimum lot area of 10 acres. The subject property totals 4.86 acres therefore no additional lot could currently be created. The proposed zoning does not have a minimum lot area. The requested zone change has the potential to increase density through subsequent subdivision in the future. The bulk and dimensional requirements are different and the number of permitted uses would increase while the number of conditional uses would decrease.

**B. Evaluation of Proposed Amendment Based on Statutory Criteria (76-2-203 M.C.A. and Section 2.08.040 Flathead County Zoning Regulations)**

**1. Whether the proposed map amendment is made in accordance with the Growth Policy/Neighborhood Plan.**

The Flathead County Growth Policy Designated Land Uses Map identifies the subject property as ‘Suburban Agricultural.’ The proposed B-3 zoning classification would appear to contrast with the current designations. However, Chapter 10 Part 3: Land Uses Maps of the Growth Policy under the heading Designated Land Use Maps specifically states, “This map depicts areas of Flathead County that are legally designated for particular land uses. This is a map which depicts existing conditions. The areas include zoning districts which are lumped together by general use rather than each specific zone and neighborhood plans. Further information on particular land uses in these areas can be obtained by consulting the appropriate zoning regulations or neighborhood plan document. The uses depicted are consistent with the existing regulations and individual plan documents. This map may be changed from time to time to reflect additional zoning districts, changes in zoning districts, map changes and neighborhood plans as they are adopted. Since this map is for informational purposes, the Planning Staff may update the same to conform to changes without the necessity of a separate resolution changing this map.” Staff interprets this to mean the Designated Land Use Map is not a future land use map that implements policies, but rather a reflection of historic land use categories. If the zoning map amendment is approved the Designated Land Use Map can be updated by staff to reflect changes made by the County Commissioners based on goals and policies of the Growth Policy.

Part 6 of Chapter 2 the Growth Policy states, *‘By efficiently locating businesses so as to mitigate the negative impacts on views, traffic, and the identity of the local community, a diverse economy with a positive impact on the local community by providing goods and services where they are needed can be promoted. Inefficiently*

*located businesses can be a high-impact burden to both the human and natural environment, and the cumulative costs to the community can outweigh the benefits.'*

- The proposed zone change is in a well-traveled transportation corridor across the street from properties that have been annexed into the City of Kalispell.

The Part 6 of the Growth Policy: *'Commercial land uses are unique for their ability to adapt and blend with other land uses. Mixing uses is especially appropriate when mutually negative impacts are mitigated. When land is visible, accessible and relatively affordable, there are limitless possibilities for commercial uses to match the local community character.'*

- The proposed B-3 zoning consists of a variety of higher density residential and neighborhood commercial uses. This potential mixed use provides a transitional zone between the residential zones to the south and east and the commercial zones along the Highway 93 corridor.

Chapter 5 states, *'accessible commercial lands, are a critical component of rebuilding and maintaining a diverse economy;'*

- The proposed commercial zoning is located in an easily accessible area along the Highway 93 corridor.
- ❖ **G.2** – *Preserve the rights of property owners to the use, enjoyment and value of their property and protect the same rights for all property owners.*
- ❖ **G.6** – *Adequate commercial land that is safely accessible and efficiently serviceable.*
  - The property is located on U.S. Highway 93, between the cities of Kalispell and Whitefish, with primary access via Highway 93, making the property safely accessible and efficiently serviceable.
- **P.6.3** – *Provide ample commercial land designation to promote affordability.*
  - If approved this zoning map amendment would add 4.86 acres to the land currently designated commercial in the County.
- ❖ **G.7** – *Consider existing community character in commercial land development.*
  - A discussion of the character of the community can be found below.
- **P.7.3** – *Encourage small-scale, impact-mitigated and compatible commercial developments in accessible, developing rural areas with good access and away from urban areas.*
  - The proposed B-3 zone would allow for commercial development on a larger scale in a semi-rural area with good access off Highway 93.
- ❖ **G.21** – *A healthy and vibrant Flathead County economy that provides diversity and living-wage job opportunities and is comprised of sustainable economic activities and private sector investments.*
  - **P.21.1** – *Provide adequate land area designated for commercial and industrial use to promote affordability, creating entrepreneurialism and/or businesses relocation to Flathead County.*
    - Approval of this zoning map amendment would provide additional land area designated for commercial use.

- ❖ **G.31** – *Growth that does not place unreasonable burden on the ability of the school district to provide quality education.*
  - Discussion on how the proposed zoning map amendment furthers the provision of schools and other public requirements can be found below.
- ❖ **G.32** – *Maintain consistently high level of fire, ambulance and emergency 911 response services in Flathead County as growth occurs.*
- ❖ **G.33** – *Maintain a consistently high level of law enforcement services in Flathead County as growth occurs.*
  - This report contains additional discussion on the adequacy of emergency service below.

**Finding #1:** The proposed zoning map amendment appears to be made in accordance with the Flathead County Growth Policy because it will provide additional land area designated for commercial use, allow for commercial development in an area with good access off Highway 93.

## **2. Whether the proposed map amendment is designed to:**

### **a. Secure safety from fire and other dangers;**

The subject property is located within the West Valley Fire District. The nearest fire and emergency response center is located approximately 1.8 road miles southwest of the property, on Whitefish Stage. The West Valley Fire Department, who did not provide comments on this proposal, would respond in the event of a fire or medical emergency. Access to the subject property would be directly from Highway 93, a paved four lane state highway.

The subject property is located within the Wildland Urban Interface (WUI) and a county wide priority area. The subject property is not heavily forested but is not located adjacent to heavily forested areas of the county.

According to FEMA FIRM Panel 30029C1415J, the property is located within an unshaded Zone X an area determined to be outside the 0.2% annual chance flood hazard.

**Finding #2:** The proposed map amendment will not impact safety from fire and other danger because even though the property is located in the WUI it is not forested and is located approximately 1.8 road miles from the nearest fire station within the West Valley Fire District, is located on a U.S. Highway and not located within the 100 year floodplain.

### **b. Promote public health, public safety, and general welfare;**

As previously stated, the subject property is located within the West Valley Fire District. The West Valley Fire Department would respond in the event of a fire or medical emergency and the Flathead County Sheriff's Department provides police services to the subject property. Highway 93 appears adequate to provide ingress and egress for emergency vehicles which would help to ensure adequate public health and safety. Permitted and conditional uses in B-3 zone would serve to protect and promote public health, safety and general welfare.

**Finding #3:** The proposed zoning map amendment appears to have minimal negative impacts on public health, safety and general welfare because the property

is served by the West Valley Fire Department, Flathead County Sheriff and future development would comply with the permitted and conditional uses in the B-3 zone.

**c. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.**

Primary access to the property is off Highway 93. Highway 93 is a 4-lane paved highway with a 200 plus foot easement. The average daily traffic along Highway 93 near the subject property in 2017 was 15,654. New commercial development may require frontage or backage roads to limit access off of the Highway.

Staff utilized the Institute of Transportation Engineers Trip Generation Manual to determine the average daily trip (ADT) generation for the commercial uses. According to the Trip Manual the average trip generation rate on a Saturday for hotel is 8.17 trips per occupied hotel room (Saturday would generate the most traffic). A hotel estimating roughly 40 units, would account for an ADT of approximately 327. An office park could generate 195.11 ADT per acre. The proposal could generate 975 ADT if all 4.86 acres are utilized for an office park. An Apartment complex could generate 6.65 ADT per dwelling unit. Assuming 24 units per acre the property could contain 120 dwelling units this could lead to 798 ADT.

If the property is only utilized for a medical or dental office as proposed by the applicant, it would generate 36.13 ADT per 1,000 square feet of floor space. The applicant does not provide a possible square footage, so it is hard to determine an exact size of the building. However if we reasonably assume 4,000 square feet the medical/dental office would generate 145 ADT. Given the wide range of uses the property could be utilized for it is hard to determine the exact ADT generated by the proposal.

Because the property is located along a 4 lane, state maintained highway and MDT did not comment on the proposal but a change in use will require a new approach permit, it appears likely the proposed zoning would not significantly impact the adequate provision of transportation.

The property is currently undeveloped. It is possible that development of this property would require public water and sewer. If the property was subdivided in the future, would require review from the Flathead City-County Environmental Health and Montana Department of Environmental Quality.

The subject property is located within the Kalispell and Flathead School Districts. Kalispell Elementary Schools have seen an increase of 13% in student enrollment over the last ten years and increase of 2% between the 2017 and 2018 school years. The Flathead High School District has increased 9% in student enrollment over the last ten years and a decrease of 1% between 2017 and 2018. The school districts did not provide comment regarding this proposal. It is anticipated that the school would have capacity should any residential growth occur as a result of the proposed zoning map amendment.

The proposed amendment from ‘SAG-10 Suburban Agricultural’ to ‘B-3 Community Business’ would reduce the 10-acre minimum lot size to none, it is anticipated subsequent future development would require review and park area required would be determined at that time. There are numerous parks, natural areas, and recreational opportunities accessible in the vicinity of the proposal.

**Finding #4:** The proposed amendment would appear to facilitate the adequate provision of transportation because the traffic would likely utilize an existing approach onto Highway 93, a backage road may be required at the time of development and the owner will need to obtain a revised approach permit from MDT.

**Finding #5:** The proposed amendment would facilitate the adequate provision of water, sewerage, schools, parks, and other public requirements because the further division of land or a change of use would require review through the Flathead City-County Health Department and the Montana Department of Environmental Quality and future development would require a site plan review and possible subdivision review.

**3. In evaluating the proposed map amendment, consideration shall be given to:**

**a. The reasonable provision of adequate light and air;**

The property within the proposed zoning map amendment is not developed, much of the property remains agricultural. While the proposed zoning map amendment has the potential to increase development density on the subject property, any additional lots created would be required to meet the bulk and dimensional requirements of the B-3 zoning classification.

The bulk and dimensional requirements for the proposed B-3 zone are not similar to the bulk and dimensional requirements for the existing SAG-10. The proposed B-3 zoning sets permitted lot coverage is not applicable and there is no minimum lot size. The proposed zoning map amendment has the potential to increase development density on the subject property. The minimum setback requirements in the B-3 are 20 feet for the front, and side-corner yards, 5 feet for side yards and 15 feet for rear yards. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 10 foot setback is required from county roads classified as collector or major/minor arterials. These bulk and dimensional requirements within the B-3 designation have been established to ensure a reasonable provision of light and air.

**Finding #6:** The proposed zoning map amendment would provide adequate light and air to the subject property because future development would be required to meet the bulk and dimensional requirements of the B-3 designation.

**b. The effect on motorized and non-motorized transportation systems;**

Primary access to the property is off Highway 93. Highway 93 is a 4-lane paved highway with a 200 plus foot easement. The average daily traffic along Highway 93 near the subject property in 2017 was 15,654. New commercial development may require frontage or backage roads to limit access off of the Highway.

Staff utilized the Institute of Transportation Engineers Trip Generation Manual to determine the average daily trip (ADT) generation for the commercial uses. According to the Trip Manual the average trip generation rate on a Saturday for hotel is 8.17 trips per occupied hotel room (Saturday would generate the most traffic). A hotel estimating roughly 40 units, would account for an ADT of approximately 327. An office park could generate 195.11 ADT per acre. The proposal could generate 975 ADT if all 4.86 acres are utilized for an office park. An Apartment complex could generate 6.65 ADT per dwelling unit. Assuming 24 units per acre the property could contain 120 dwelling units this could lead to 798 ADT.

If the property is only utilized for a medical or dental office as proposed by the applicant, it would generate 36.13 ADT per 1,000 square feet of floor space. The applicant does not provide a possible square footage, so it is hard to determine an exact size of the building. However if we reasonably assume 4,000 square feet the medical/dental office would generate 145 ADT. Given the wide range of uses the property could be utilized for it is hard to determine the exact ADT generated by the proposal.

Because the property is located along a 4 lane, state maintained highway and MDT has no comment on the proposal but a change in use will require a new approach permit it appears likely the proposed zoning would not significantly affect motorized transportation.

The HO Highway Overlay requires the dedication of no less than a 10 foot easement adjacent to the Highway 93 right of way if there is new commercial development, expansion of existing commercial development or a change of use of an existing commercial development of the property. Additionally, the Flathead County Trails Plan identifies Highway 93 as an arterial bike/pedestrian trail. It is anticipated that there will be minimal impact on non-motorized traffic because future development (either through subdivision or site plan review) of the property would require an easement for a bicycle trail along Highway 93.

**Finding #7:** Effects on motorized and non-motorized transportation systems will be minimal because the traffic would utilize an existing approach onto Highway 93 and a revised approach permit from MDT would be required for a change in use, a backage road may be required at the time of development and there appears to be adequate space for a future bike/pedestrian easement along Highway 93.

**c. Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);**

The subject property is located within the Kalispell Growth Policy Map, annexation policy boundary and adjacent to the Kalispell City limits. The City of Kalispell Growth Policy designated the property as ‘*Suburban Residential*.’

The ‘*Suburban Residential*’ is defined in the Kalispell Growth Policy as, “*Low-density residential (suburban) neighborhoods should be developed at a density that does not exceed 4 dwelling units per acre on an overall site basis.*” The proposal for B-3 would allow for commercial development and residential development at a density greater than 4 dwelling units per acre.



**Finding #8:** The proposal does not appear to be compatibility the City of Kalispell's urban growth because the City designates the property 'Suburban Residential' and the proposed zoning would allow for residential development that exceeds 4 dwelling units per acre and commercial development.

- d. **The character of the district(s) and its peculiar suitability for particular uses;** The character of the district and its peculiar suitability for particular uses can best be addressed using the "three part test" established for spot zoning by legal precedent in the case of *Little v. Board of County Commissioners*. Spot zoning is described as a provision of a general plan (i.e. Growth Policy, Neighborhood Plan or Zoning District) creating a zone which benefits one or more parcels that is different from the uses allowed on surrounding properties in the area. Below is a review of the three-part test in relation to this application and the character of the district and its peculiar suitability for particular uses.

- i. ***The zoning allows a use that differs significantly from the prevailing use in the area.***

The character of the overall zoning in the area is suburban agricultural with the majority of the property in the area zoned SAG-10 and SAG-5. Within a quarter of a mile of the property are business uses, rural residential and a mixed use subdivision within the City of Kalispell.

The B-1 zones along the Highway allow for neighborhood/professional business at a smaller scale than what is permitted in the B-3 zone. Many of the uses allowed in B-3 are not permitted in the neighboring zones including; automobile service station, college/trade school, supermarket, micro-brewery (without a CUP), micro-distillery (without a CUP), restaurant (without a CUP), shopping mall, theater, bowling alley, hotel/motel and tavern.

The proposed zoning map amendment, if approved, would allow for uses that are typical of business districts but not similar to uses that are allowed under the existing residential, suburban agricultural and commercial zoning on surrounding properties.

- ii. ***The zoning applies to a small area or benefits a small number of separate landowners.***

The zoning map amendment would apply to one tract of land which is owned by one landowner. The property proposed for the zone change is adjacent to existing B-3/HO and would be considered a continuation of that zoning designation.

Using standard ArcGIS software staff was able to determine the subject property is located within a SAG-10 zoned area approximately 439 acres in size. The SAG-5 zoning to the east is approximately 1445 acres and the SAG-10 to west is approximately 40 acres. Also in the vicinity of the property is B-1 zoning to both to the north and south, approximately 6.39 acres and 3.27 acres respectively. Other zoning districts in the area range in size from 4.45 acres to approximately 200 acres.

- iii. *The zoning is designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public and, thus, is in the nature of special legislation.*

The HO zone would require landscaping for parking lots, and buffers if a certain amount of the property is developed. If the owner develops up to 1 acre, landscaping 10% of the developed area is required. If the 1 to 4.86 acres of the property is developed 8% of the developed area is required to be landscaped.

Buffers are required between different zoning districts, so the property when developed will be required to have buffering on the north, and east sides of the property. The buffering would require a visual screen of trees and shrubs, the owner could also utilize, fencing, walls or earthen berms.

The buffering and landscaping could serve to limit the impact of the B-3/HO zoning on the surrounding landowners and the general public. New commercial development may require frontage or backage roads to limit access off of the Highway. The HO zone also requires a site plan review prior to the development of a property.

The proposed zoning map amendment does not appear to be at risk of spot zoning, as it does not appear to meet all three of the criteria.

**Finding #9:** The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because design standards and site plan review serve to limit the impact of the B-3/HO zoning on the surrounding landowners and the general public, and the proposed zoning would be a continuation of the existing B-3/HO zoning to the south.

- e. **Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.**

The property is located within the Highway 93 North Zoning District, which is a 12,780-acre zoning district that covers much of the area between Whitefish and Kalispell. Looking at the zoning within a half mile of the subject property and further north and south along Highway 93 the character of the Highway 93 corridor is a mixture of suburban agricultural, highway industrial, commercial and residential zoning. The property is located along Highway 93. Directly adjacent to the property is existing B-3/HO and property generally rural residential and agricultural in nature which are zoned SAG-10, SAG-5 and R-2.

To the south along the highway is B-1 zoning with a couple of businesses and a golf course zoned SAG-10. Less than a half mile to the north is legally non-conforming businesses in SAG-10 zoning. The City of Kalispell extends on the west of Highway 93 past Tronstad Road to Church Drive, approximately 1 mile north of the property (Silverbrook Subdivision). The zoning within the Silverbrook Subdivision is a mixture of B-1/PUD at the corner of Church and Highway 93 and R-4/PUD and R-2/PUD. Because there is a mixture of uses in the area, the proposed zone change would likely conserve the value of buildings and encourage the most appropriate use of land throughout the jurisdictional area.

**Finding #10:** This proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this location because the area already contains a variety of uses.

**4. Whether the proposed map amendment will make the zoning regulations, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.**

As previously stated, the subject property is located within the Kalispell Growth Policy Map, annexation policy boundary and adjacent to the Kalispell City limits. The closest properties within the City of Kalispell are zoned R-2, R-2/PUD and R-3/PUD. The City's R-2 and R-3 zones are residential in nature. Both allow for attached townhomes with a conditional use permit but neither allows for commercial uses typical of the County's B-3 zoning. The nearest business zones within the City of Kalispell is B-1/PUD a mile to the north and B-2/PUD a mile to the south. The proposed B-3 zone would be more compatible with the City's business zones than the neighboring residential zones, however duplexes and multifamily dwellings are allowed with a Conditional Use Permit.

**Finding #11:** The proposal appears to be compatible with the City of Kalispell's zoning because the nearest City business zones allow for similar uses to the proposed B-3 zone, and the B-3 zone allows for multi-family residential use with a Conditional Use Permit similar to the nearest City zoning.

## **I. SUMMARY OF FINDINGS**

1. The proposed zoning map amendment appears to be made in accordance with the Flathead County Growth Policy because it will provide additional land area designated for commercial use, allow for commercial development in an area with good access off Highway 93.
2. The proposed map amendment will not impact safety from fire and other danger because even though the property is located in the WUI it is not forested and is located approximately 1.8 road miles from the nearest fire station within the West Valley Fire District, is located on a U.S. Highway and not located within the 100 year floodplain.
3. The proposed zoning map amendment appears to have minimal negative impacts on public health, safety and general welfare because the property is served by the West Valley Fire Department, Flathead County Sheriff and future development would comply with the permitted and conditional uses in the B-3 zone.
4. The proposed amendment would appear to facilitate the adequate provision of transportation because the traffic would likely utilize an existing approach onto Highway 93, a backage road may be required at the time of development and the owner will need to obtain a revised approach permit from MDT.
5. The proposed amendment would facilitate the adequate provision of water, sewerage, schools, parks, and other public requirements because the further division of land or a change of use would require review through the Flathead City-County Health Department and the Montana Department of Environmental Quality and future development would require a site plan review and possible subdivision review.

6. The proposed zoning map amendment would provide adequate light and air to the subject property because future development would be required to meet the bulk and dimensional requirements of the B-3 designation.
7. Effects on motorized and non-motorized transportation systems will be minimal because the traffic would utilize an existing approach onto Highway 93 and a revised approach permit from MDT would be required for a change in use, a backage road may be required at the time of development and there appears to be adequate space for a future bike/pedestrian easement along Highway 93.
8. The proposal does not appear to be compatibility the City of Kalispell's urban growth because the City designates the property '*Suburban Residential*' and the proposed zoning would allow for residential development that exceeds 4 dwelling units per acre and commercial development.
9. The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because design standards and site plan review serve to limit the impact of the B-3/HO zoning on the surrounding landowners and the general public, and the proposed zoning would be a continuation of the existing B-3/HO zoning to the south.
10. This proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this location because the area already contains a variety of uses.
11. The proposal appears to be compatibility the City of Kalispell's zoning because the nearest City business zones allow for similar uses to the proposed B-3 zone, and the B-3 zone allows for multi-family residential use with a Conditional Use Permit similar to the nearest City zoning.

## **II. CONCLUSION**

Per Section 2.08.020(4) of the Flathead County Zoning Regulations (FCZR), a review and evaluation by the staff of the Planning Board comparing the proposed zoning map amendment to the criteria for evaluation of amendment requests found in Section 2.08.040 FCZR has found the proposal does not generally comply with all the review criteria, based upon the draft Findings of Fact presented above. Section 2.08.040 does not require compliance with all criteria for evaluation, only that the Planning Board and County Commissioners should be guided by the criteria.

Planner: DV